

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 03.09.2018

CORAM

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.6756 of 2003

Pankajam

... Petitioner

Vs.

The Superintending Engineer,
Madras Electricity Distribution
Circle, (North),
791, Anna Salai,
Chennai - 600 002.

.... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, after calling for the records from the respondent relating to the orders Nos. Lr.No.Me.Pa.Po/Vadakku/Ni.Pi-2/Ni.Voo.3/No.12, dated 13.03.2000 and Lr.No.Me.Pa.Po/Se.Pi.Pa.Va/Va/Ni.Pi.2/VooTha.5/No.607-2/2002, dated 18.12.2002 quash the same and to direct the respondent to consider the petitioner's son Mr.Gopal or Mohan for compassionate appointment.

For Petitioner : Mr.V.Ajoy Khose
For Respondent : Mr.P.R.Dilipkumar

O R D E R

This writ petition has been filed seeking for a Writ of Certiorarified Mandamus, calling for the records from the respondent relating to the orders Nos.Lr.No.Me.Pa.Po/Vadakku/Ni.Pi-2/Ni. Voo.3/No.12, dated 13.03.2000 and Lr.No.Me.Pa.Po/Se.Pi.Pa. Va/ Va/ Ni.Pi.2/Voo Tha.5/No.607-2/2002, dated 18.02.2002 and quash the same.

2.The short facts which are required to be noticed for the disposal of the writ petition are as follows :-

The petitioner's husband one M.Gajendran was employed as wireman at the respondent Board from 15.04.1970. He had served in the Board for 19 years. However, on 01.11.1989, he died in train accident while he was in service. Because of the sudden death of the bread winner of the family, the petitioner's family had suddenly put in indigent circumstances, as there is no other person to take care of the family of the

petitioner. Therefore, in order to get the employment opportunity to his son one Gopal, the petitioner made an application to the respondent Board, seeking for compassionate appointment.

3. It is the claim of the petitioner that, the said application dated 17.03.1997 was filed by the petitioner with the help of her neighbour. The petitioner's son Gopal, studied in the primary school at Karukku Village upto Vth standard and thereafter, he studied upto VIII std., in Sir Ramasamy Mudaliar Higher Secondary School, Ambattur, Chengleput M.G.R. District. The Transfer Certificate given by the Sir Ramasamy Mudaliar Higher Secondary School where the petitioner's son studied upto VIIth standard had been given to the neighbour for including the same, while applying for compassionate appointment.

4. Further, it is the claim of the petitioner that, the said neighbour, whether had enclosed the said Transfer Certificate or not, was not known to the petitioner. At any rate, on 13.03.2000, the respondent Board has rejected the petitioner's request for giving compassionate appointment to her son on the ground that, the Transfer Certificate annexed along with the application seeking compassionate appointment was found to be ingenuine.

5. Subsequently, the petitioner's son made an application on 19.11.2002 along with proper Transfer Certificate obtained from Sri Ramasamy Mudaliar Higher Secondary School, Ambattur, Ms-53, Saidapet, Chengleput M.G.R. District in serial No.2628. However, the said application made by the petitioner had been once again rejected through the impugned order dated 18.12.2002 stating that, since the earlier application of the petitioner was rejected by order dated 30.03.2000, on the ground that the Transfer Certificate to prove the educational qualification of the petitioner's son was found to be ingenuine, further certificate cannot be obtained and produced before the authorities for seeking compassionate appointment and on that ground, the subsequent application was also rejected. Challenging both the impugned orders of rejection for considering the compassionate appointment of the petitioner's son passed by the respondent Board on 13.03.2000 and 18.12.2002, this writ petition has been filed.

6. I have heard Mr.V.Ajoy Khose, learned counsel appearing for the petitioner, who would submit that, the petitioner had not produced any certificate other than the one, which was issued by Sir Ramasamy Mudaliar Higher Secondary School, Ambattur, Chengleput M.G.R. District, where the

petitioner studied upto VIII standard and he had been promoted to IX standard. Since earlier application filed by the mother of the petitioner through her neighbour as his help was sought for to make the application, but it was not known as to whether the said neighbour had annexed the certificate, along with the earlier application.

7. The learned counsel would further submit that, based on the second application, the certificate filed by the petitioner or her son should have been verified and if the respondent found that, it is genuine one, the penurious and indigent circumstance of the family has to be looked into and based on which, a decision has to be taken by the respondent Board for giving job to the petitioner on compassionate ground. Instead, the respondent had simply given reasons stating that, the earlier application since was rejected on the ground of production of alleged bogus certificate, the second application, with another certificate without verifying, was rejected in entirety, may not be a justifiable reason on the side of the respondent and therefore, the impugned order have to be interfered with.

8. Per contra, Mr.P.R.Dilipkumar, learned counsel appearing for the respondent Board would submit that, the first application submitted by the petitioner seeking compassionate appointment was annexed with Transfer Certificate where, it was mentioned that the petitioner studied upto Vth standard in a Primary School at Karuku Village. The certificate produced by the petitioner along with the first application dated 17.03.1997 was referred to the educational authorities and it was found to be a bogus one and therefore, the application was rejected.

9. However the second application was filed on 19.11.2002 with another Transfer certificate obtained from the Sir Ramasamy Mudaliar Higher Secondary School, Ambattur, Chengleput M.G.R. District, and the same whether was genuine or not, the said application second time made by the petitioner or her son dated 19.11.2002 is a time barred one as per Board proceedings, since the application seeking compassionate appointment should have been made, within a period of three years from the date of death of the employee and admittedly, the second application had not been filed within the said three years period, the same was rejected as time barred and therefore, both the rejection orders are justifiable and hence, no interference is required from this Court.

10. I have considered the said submissions made by the learned counsel for both sides. If at all, the respondent found that the transfer certificate annexed along with the first application made by the petitioner was bogus, and for the said

reason, the application of the petitioner was rejected, before which, an opportunity could have been given to the petitioner to prove that the transfer certificate filed by the petitioner was genuine one. Without giving any opportunity, the said order of rejection was passed on the first application, which is the first impugned order herein.

11. Insofar as the second application is concerned, it is the claim of the petitioner that, he studied upto VIIIth standard and passed VIIIth standard in the said school namely, Sir Ramasamy Mudaliar Higher Secondary School, Ambattur, Chengleput M.G.R. District, and in this regard, he produced the Transfer Certificate. Insofar as the second application is concerned, it is the stand of the respondent Department that once the earlier application was rejected, the second application with another certificate should not have been made.

12. In the counter affidavit also, the respondent has specifically stated that the second certificate produced by the petitioner on 19.11.2002 is time barred one. Insofar as the production of certificate is concerned, it cannot be said that it is a time barred one. Moreover, a certificate can be used only as a proof to establish the fact which is already existed. Merely because the certificate was produced at a later date, it cannot be stated that the production of the certificate itself is belated, as the time limit of three years period prescribed is only for making application for compassionate appointment.

13. In this case admittedly, the application was filed within the three years period, though the same was rejected by the respondent Board on the ground that the certificate produced along with the application was a bogus one, the said rejection order ought not to have been passed, without giving any opportunity to the petitioner to substantiate her stand that, the said certificate sought to have been annexed along with the application was a genuine one.

14. Therefore, the first rejection order cannot withstand in the legal scrutiny, therefore, it has to go. Once, the first application seeking compassionate appointment got restored, then the application submitted by the petitioner was in time. Insofar as the second application is concerned, the transfer certificate was produced by the petitioner which she claims it is the Transfer Certificate of the petitioner's son and no other certificates the petitioner had either produced to the respondent Board since the first application was sent with the help of the neighbour.

15. Therefore, the further course of action should have been taken by the respondent Board in this regard is to verify

the genuinity of the Transfer Certificate produced by the petitioner or her son along with the second application. On verification, if the respondent found that the said certificate was a genuine one, then the indigent circumstances of the family of the petitioner also have to be taken as criteria, for consideration, for giving compassionate appointment. Instead, if the second certificate produced by the petitioner also was found to be ingenuine or bogus, after giving an opportunity to the petitioner/her son, while rejecting the request of the petitioner, the respondent could also refer the matter to the concerned police for criminal prosecution against the petitioner and her son for producing the ingenuine or bogus transfer certificate.

16. The said action as indicated above, since has not been followed and both orders have been passed, without giving any opportunity to the petitioner to explain their position and to take the defence defending that the action was genuine, the said orders, which are impugned herein, no doubt are in violation of the principles of natural justice and hence, they are liable to be interfered with.

17. In the result, the impugned orders are quashed and the matter is remitted back to the respondent for re-consideration. While making re-consideration, the Transfer Certificate produced second time along with the application of the petitioner or her son dated 19.11.2002 shall be considered by the respondent and in this regard, it is open to the respondent, to verify the genuinity of the certificate.

18. Once the respondent found that the certificate produced along with the application dated 19.11.2002 is genuine, then it is open to the respondent to consider the penurious circumstances and indigent situation of the family of the petitioner as to whether still they require any assistance or compassionate appointment from the respondent Board. On such verification from the appropriate authorities if the respondent Board found that the second certificate produced along with the second application dated 19.11.2002 is also ingenuine or bogus, after giving opportunity to the petitioner or her son to defend themselves, a decision can be taken by the respondent Board and in that case, the respondent can also refer the matter to the concerned police for investigation and to launch a criminal prosecution against the petitioner and her son.

19. The aforesaid exercise as indicated above shall be completed by the respondent, within a period of three months from the date of receipt of the copy of this order.

With these directions, this writ petition is disposed of.
No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

Smi

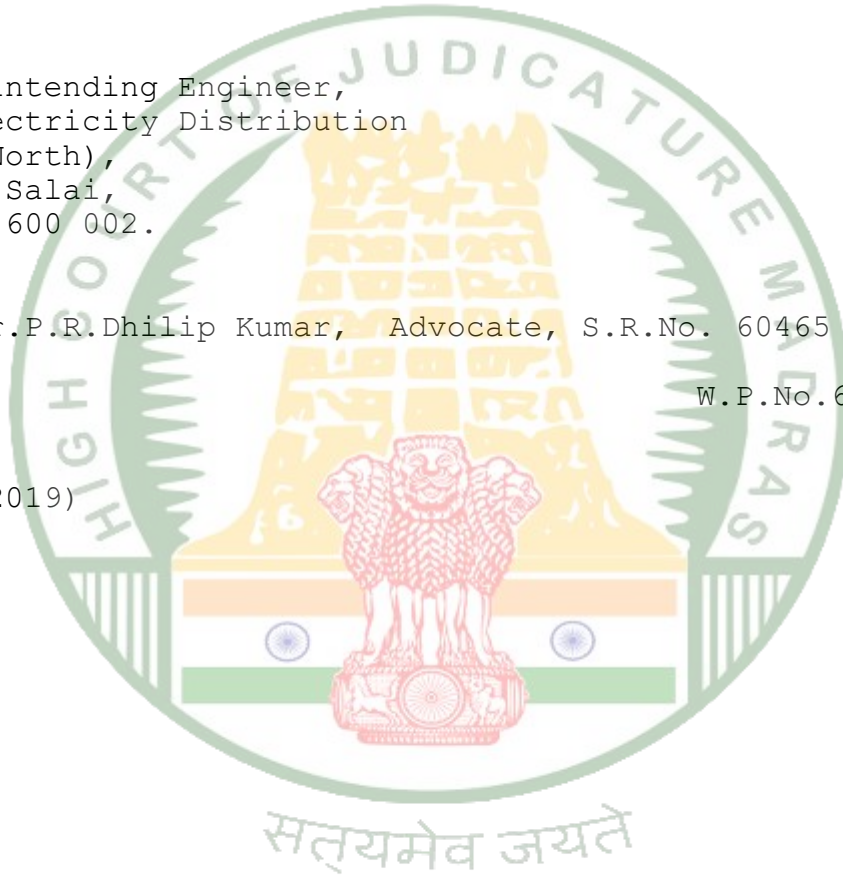
To

The Superintending Engineer,
Madras Electricity Distribution
Circle, (North),
791, Anna Salai,
Chennai - 600 002.

+1cc to Mr.P.R.Dhilip Kumar, Advocate, S.R.No. 60465

W.P.No.6756 of 2003

GN(13/03/2019)



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